



**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE**

D.T.C. 12-2

January 30, 2013

Petition of Comcast Cable Communications, LLC to establish and adjust the basic service tier programming, equipment, and installation rates for the communities in Massachusetts served by Comcast Cable Communications, LLC that are currently subject to rate regulation.

RATE ORDER

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I. INTRODUCTION

In this Order the Department of Telecommunications and Cable (“Department”) approves the petition of Comcast Cable Communications, LLC (“Comcast” or “Company”), in which Comcast seeks to establish basic service tier (“BST”) maximum permitted rates (“MPR”), and equipment and installation rates for its 128 regulated Massachusetts communities. A list of the regulated Massachusetts communities served by Comcast can be found in the Rate Schedule attached as Attachment 1.

II. PROCEDURAL HISTORY

On February 1, 2012, Comcast filed Federal Communications Commission (“FCC”) Forms 1240 with the Department in which Comcast proposed BST MPRs for each of its regulated Massachusetts communities. *Pet. of Comcast Cable Commc’ns., LLC to Establish & Adjust the Basic Serv. Tier Programming, Equip., & Installation Rates for the Cmtys. in Mass. Served by Comcast Cable Commc’ns., LLC that are Currently Subject to Rate Regulation* (“Comcast Rate Setting Petition”), D.T.C. 12-2 (“Docket”) at 1. Comcast also filed a nationwide FCC Form 1205 in which the Company proposed equipment and installation MPRs for all of its regulated Massachusetts communities. *Id.* Pursuant to FCC regulations, Comcast’s proposed BST programming, equipment, and installation rates became effective on May 1, 2012.

47 C.F.R. § 76.933(g).

On February 21, 2012, the Town of Weymouth submitted a request to intervene in the rate proceeding. *Id.* On April 10, 2012, the Town of North Andover also submitted a request to intervene. *Id.* The Department approved Weymouth’s and North Andover’s intervention in the rate proceeding on July 6, 2012. *Id.* On August 7, 2012, the Department issued a Notice of Public Hearing, Order of Notice, and Letter Notice to Issuing Authorities. *Id.* The Department

issued its First Set of Information Requests on August 17, 2012, and Comcast filed its responses on August 31, 2012. *Docket* at 2. On September 7, 2012, Comcast supplemented its responses to the information requests and concurrently filed a Motion for Confidential Treatment. *Id.* On September 10, 2012, the City of Boston filed a petition to intervene in the rate case. *Id.* Comcast filed its Proof of Notice of the Hearing on September 10, 2012. *Id.*

The Department held public and evidentiary hearings on September 12, 2012. *Id.* At the evidentiary hearing, the Department requested the parties brief the question of whether to grant Boston's petition to intervene. *Tr.* at 7-8, Sept. 12, 2012. The Department also issued seven record requests ("Record Requests") to Comcast at the evidentiary hearing.

On September 20, 2012, Boston filed a brief in support of its request to intervene. *Docket* at 2. Comcast filed its opposition to Boston's request on September 21, 2012. *Id.* The Department permitted Boston to intervene as a limited participant on November 14, 2012. *Id.* As a limited participant, Boston was permitted to address its concerns with Comcast's FCC Form 1205 in the proceeding. *Comcast Rate Setting Petition*, D.T.C. 12-2, *Hr'g Officer Ruling on Pet. to Intervene* at 13 (Nov. 14, 2012). On November 29, 2012, Boston filed its brief addressing its concerns with Comcast's FCC Form 1205. *Docket* at 2. Comcast filed a response to Boston's brief on December 7, 2012. *Id.*

With respect to the Department's Record Requests issued at the September 12, 2012 evidentiary hearing, Comcast submitted its responses on September 28, 2012. *Id.* In the cover letter to its responses, Comcast requested the Department grant confidential treatment to its responses to Record Requests 1 and 2 under the motion previously filed with the Department. *Id.* The Department granted Comcast's motion for confidential treatment on November 27, 2012, but directed Comcast to file a revised redacted version of its responses to the Department's

Information Requests and Record Requests because the Company had redacted more information than granted by the Department. *Comcast Rate Setting Petition*, D.T.C. 12-2, *Hr’g Officer Ruling on Motion for Protective Treatment* at 13 (Nov. 27, 2012). Comcast filed the revised version of its redacted responses to the Department’s Information Requests and Record Requests on December 11, 2012. *Id.*

The evidentiary record consists of 130 exhibits, 34 responses to Department Information Requests, the transcripts to the public and evidentiary hearings, and seven responses to Department Record Requests.¹

III. ANALYSIS AND FINDINGS

After review and consideration, the Department approves Comcast’s FCC Forms 1240 and Form 1205 and finds the proposed rates to be reasonable in accordance with and subject to the Department’s findings below.

A. Comcast’s FCC Forms 1240

A cable operator must calculate its rates upon specific FCC-created forms incorporating the provisions of its rate regulations. *See* 47 C.F.R. §§ 76.922, 76.930. A cable operator is allowed to update annually its BST programming rates to account for inflation; changes in the number of regulated channels; and changes in external costs, including programming costs, copyright costs, and franchise related costs (“FRCs”). 47 C.F.R. § 76.922(e). To adjust the rates on the FCC Form 1240 for projections in external costs, or for projected changes to the number of regulated channels, the cable operator must demonstrate that its projections are reasonably

¹ Citations to Comcast’s FCC Forms 1240 and 1205 are to “Ex. Comcast-1,” *et seq.* Citations to Comcast’s FCC Forms 1240 and 1205 as amended are to the attachment included with Comcast’s revision submitted in response to Information Requests, *e.g.*, “IR 1-34, Attachment 1-34.” Citations to the Information Requests issues and Comcast’s responses are to “IR 1-1,” *et seq.* Citations to the evidentiary transcript are to Tr. at [page number]. Citations to the Record Requests and Comcast’s Responses are to “RR-1,” *et seq.*

certain and reasonably quantifiable. *See* 47 C.F.R. §§ 76.922(e)(2)(ii)(A), 76.922(e)(2)(iii)(A). Projections involving copyright fees, retransmission consent fee costs, other programming costs, FCC regulatory fees, and cable specific taxes are presumed to be reasonably certain and reasonably quantifiable. *See* 47 C.F.R. § 76.922(e)(2)(ii)(A). Cable operators may also project for increases in FRCs to the extent they are reasonably certain and reasonably quantifiable. *Id.* FRC projections, however, are not presumed to be reasonably certain and reasonably quantifiable. *Id.*

The Department reviews rate adjustments on an FCC Form 1240 pursuant to the FCC's rate regulations. *See* 47 C.F.R. § 76.922(a). Specifically, the FCC directs local rate regulators, such as the Department, to ensure that the approved rates are in compliance with the Communications Act of 1934, as amended ("Communications Act"), and do not exceed the maximum permitted charges calculated using the FCC's rate forms. *Id.* The Department may accept, as compliant with the statute, BST rates that do not exceed the approved maximum permitted charge as determined by federal regulations. *See* 47 C.F.R. §§ 76.922(a), 76.922(c). In addition, the Department shall approve only those rates that it deems reasonable. *See* 47 U.S.C. § 543; 47 C.F.R. § 76.937(d)-(e); G. L. c. 166A, §§ 2, 15. The cable operator has the burden of proving that its proposed BST programming rates comply with Section 623 of the Communications Act, and implementing regulations. *See* 47 U.S.C. § 543; 47 C.F.R. § 76.937(a) (regulation assigning the burden of proof to the cable operator); *Implementation of Sections of the Cable Television Consumer Protection & Competition Act of 1992: Rate Regulation, Report & Order & Further Notice of Proposed Rulemaking*, 8 F.C.C.R. 5631, at 5716, ¶ 128 (May 3, 1993) ("*FCC Rate Order*").

The Department determines that all of Comcast's FCC Forms 1240, as amended, are in compliance with federal and state laws and regulations and that the proposed rates are reasonable.

1. Western Massachusetts Retransmission Consent Fee Costs

The FCC, in its Form 1240, provides for recovery of retransmission consent fees costs for those channels assigned to the BST. *See* FCC Form 1240 Instructions at 2, 3, and 27. Comcast included retransmission consent fee costs in its FCC Forms 1240 for all of its Massachusetts franchises. *See* Ex. Comcast-1 through Comcast-128. Comcast provided two schedules in support of its retransmission consent charges: (i) the total retransmission expenses incurred for each broadcaster, and the average number of subscribers within the broadcaster's territory to calculate a monthly retransmission cost per-subscriber for each broadcaster; and (ii) the per-subscriber fee for each applicable broadcaster in each community. *See* IR 1-28.

The Department's review of Comcast's FCC Forms 1240 identified increases in retransmission consent fee costs from the prior projected period to the projected period for communities located in the western Massachusetts counties of Franklin, Hampden, Hampshire, and Berkshire. *See* IR 1-16. Additionally, the Department noted increases in retransmission consent fee costs for the Towns of Stoughton and Swansea. *See* IR 1-25. In response to Department information requests, Comcast stated that, "the retransmission costs reported in the originally submitted FCC Forms 1240 for the systems located in [Hampden, Hampshire, Franklin, and Berkshire] counties were overstated." *See* IR 1-16. Comcast also stated that its FCC Forms 1240 for Stoughton and Swansea included erroneous retransmission consent fee costs. *See* IR 1-25. As a result, Comcast amended the filings for the affected western Massachusetts communities as well as Stoughton and Swansea and submitted revised FCC

Forms 1240. IR 1-16, Attachment 1-16; IR 1-25, Attachment 1-25; IR 1-25, Attachment 1-25A.

The Department accepts the FCC Forms 1240 as amended for the western Massachusetts communities as well as Stoughton and Swansea.

In 14 of the affected communities² Comcast proposed operator selected rates (“OSRs”) that are above the revised MPRs in the amended FCC Forms 1240 submitted to the Department. *See* RR-6, Attachment RR-6. In response to Department questioning during the evidentiary hearing concerning how Comcast would correct the OSRs, Comcast proposed to resolve the overcharges through the true-up mechanism in next year’s rate filing for each of the affected communities. *See* Tr. at 46; *see also* RR-7. Comcast proposed this solution to avoid the cost and burden of issuing small credits to subscriber. Tr. at 46.

The Department has previously permitted refunds through a true-up mechanism if doing so will properly compensate subscribers and issuing cash refunds or bill credits to subscribers may cause an undue burden to the cable operator. *See Comcast Rate Setting Petition*, D.T.C. 10-8, *Order on Reconsideration* at 5 (Apr. 23, 2012). The amounts at which the OSRs exceeded the revised MPRs vary from \$0.01 to \$0.14 from the period beginning May 1, 2012. *See* RR-6, Attachment RR-6. The Department believes that the burden imposed in issuing a cash refund or bill credit to each subscriber outweighs its benefit. *See Comcast Rate Setting Petition*, D.T.C. 10-8, *Order on Reconsideration* at 5 (Apr. 23, 2012) (Department permitted Comcast to refund overcharges through the true-up mechanism where on balance subscribers would be properly refunded and Comcast would incur administrative burden to issue refunds directly to subscribers). Accordingly, the Department accepts Comcast’s proposal and directs the Company

² The affected communities are Agawam, Amherst, Hatfield, Holyoke, Northampton, Orleans, Palmer, Pelham, South Hadley, Springfield, Ware, West Springfield, Westfield, and Williamsburg. *See* RR-6, Attachment RR-6.

to refund the overcharges to consumers through the true-up mechanism built into the FCC Forms 1240 for the affected communities in next year's rate filing.

2. Towns of Dover and Foxboro

The Department in its review of Comcast's FCC Forms 1240 for the Towns of Dover and Foxboro identified a decrease in programming costs for each community between the prior projected period and current true-up period. *See* Ex. Comcast-30; Ex. Comcast-39. In response to the Department's inquiry into the decreased costs, Comcast explained that it had inadvertently omitted the accurate channel lineup from the FCC Form 1240. *See* IR 1-7; IR 1-9. Comcast amended FCC Forms 1240 for Dover and Foxboro with a corrected channel lineup and associated programming costs. *See* IR 1-7, Attachment 1-7; IR 1-9, Attachment 1-9. The revised FCC Form 1240 for Dover reflected an increased MPR from \$8.28 to \$8.81. *See* RR-6, Attachment RR-6. The revised FCC Form 1240 for Foxboro showed an increase in the MPR from \$13.76 to \$14.28. *Id.* The Department finds that Comcast's FCC Forms 1240, as amended, for Foxboro and Dover reflect the appropriate associated programming costs and accepts the FCC Forms 1240s as amended.

3. City of Quincy

The Department found, in its review of the FCC Form 1240 for the Town of Quincy, a discrepancy in the external costs for the projected period. *See* Ex. Comcast-92. The Department identified that the amounts entered by Comcast on Lines 704 "External Costs eligible for 7.5% Markup and 705 "Marked up External Costs" were lower than the value based upon the costs included in Lines 701, 702 and 703. *See* Ex. Comcast-95. Cable operators are instructed to add up the external costs for programming, retransmission consent fee costs and copyright costs (Lines 701, 702 and 703) to calculate the External Costs Eligible for 7.5% Markup (Line 704).

See FCC Form 1240 Instructions at 27. Cable operators may then take a 7.5% mark-up increment on those costs (Line 705). *Id.*

The Department inquired into the discrepancy and requested that Comcast verify the external costs for the projected period for Quincy. *See* IR 1-23. In response, Comcast stated that there were “inadvertent errors” made in preparing the FCC Form 1240 for Quincy. *See* IR 1-23. Comcast also amended its FCC Form 1240 for Quincy correcting these errors. *See* IR 1-23, Attachment 1-23. The FCC Form 1240, as amended, reflects adjustments to the external costs eligible for 7.5% markup and the revised calculations increased the MPR. *Id.* Specifically, the external costs eligible for the 7.5% markup increased from \$0.09 to \$0.72. *Id.* In turn, the MPR increased from \$9.28 to \$9.91. *Id.* The Department finds that the adjustments made to the amended FCC Form 1240 for Quincy are appropriate. Accordingly, the Department accepts the FCC Form 1240 as amended.

4. Town of Dennis

In reviewing the FCC Form 1240 for the Town of Dennis, the Department identified an increase in retransmission consent fee costs over those reported on the previous year’s FCC Form 1240. *See* Ex. Comcast-28. The Department requested that Comcast provide a detailed explanation for the increase. *See* IR 1-6. In response to the Department’s inquiry, Comcast determined that a broadcaster had been erroneously included in Dennis’s channel lineup. *Id.* Comcast submitted an amended FCC Form 1240 correcting the error. *See* IR 1-6, Attachment 1-6. The Department finds that the adjustments made to the amended FCC Form 1240 for Dennis are appropriate. Accordingly, the Department accepts the FCC Form 1240 as amended. The corrected error decreases the retransmission consent fee costs and the MPR. *Id.* Though the MPR decreased, the OSR is still below the MPR for Dennis and Comcast has not charged

customers a rate above the maximum permitted. *See* RR-6, Attachment RR-6. Accordingly, no customer refunds are required.

5. I-Net Mileage

The Department identified through its review of Comcast's FRC Worksheets for FCC Forms 1240 that Comcast had made changes to the number of miles of the Institutional Network ("I-Net") that Comcast maintains in 58 communities. *See e.g.*, Ex. Comcast-36 (Essex FCC Form 1240); Ex. Comcast-54 (Holyoke FCC Form 1240); Comcast-120 (Westfield FCC Form 1240). The Department requested a detailed explanation for the change in I-Net mileage for the identified communities. *See e.g.*, IR 1-8; IR 1-13; IR 1-17; IR 1-18. In response, Comcast explained that in preparing the FRC worksheets to be included with the FCC Forms 1240, it included the results of a recent audit of I-Net mileage it had conducted. *See* IR 1-8. The audit showed that the actual I-Net mileage maintained by Comcast differed from the mileage previously reported. *Id.* Comcast stated that it decreased the reported mileage in the new FRC calculation if the mileage in the historic FRC calculation was greater than the audited mileage. *Id.* Comcast deferred the upward adjustment for communities in which the historical mileage in the FRC was less than the audited mileage, but stated that it may make adjustments at the next license renewals for the affected communities. *Id.*

During the evidentiary hearing, the Department further inquired into the audit conducted by Comcast and requested a list of the communities with adjusted I-Net mileage. Tr. at 37. Comcast identified 52 communities in which its audit showed an increase in mileage and eight communities showed a decrease. *See* RR-3. For six of the eight communities that showed a

decrease in mileage, Comcast included a decrease in the associated FRC Worksheets with the FCC Forms 1240.³ *Id.*

Comcast's I-Net mileage audit also reflected a decrease in mileage for the Town of Amesbury, but the decrease was inadvertently omitted by the Company on the FRC Worksheet for Amesbury. *Id.* Comcast's audit also showed that the I-Net for the Town of Concord was comprised of a less expensive network type, resulting in a decrease that was omitted on the FRC worksheet for Concord. *Id.* Comcast proposes to account for the differences in Amesbury and Concord with true-up adjustments in the next FRC worksheet filing. *See* RR-3.

Comcast adjusted the FRC increments related to I-Net maintenance in the eight affected communities on a going-forward basis, but has not adjusted the FRC worksheets to account for over-collections that occurred before the incorporation of audit-related correction into its FRC calculations. Accordingly, the Department directs Comcast to develop a plan to reconcile previous over-collections against future FRC obligations. The plan should calculate the total amount over-collected by community, from the execution date of that community's most recent license agreement. The Department further directs Comcast to submit its proposed plan to the Department within 30 days of the date of this Order. Comcast shall identify in its plan: (1) the change in network miles for each community; (2) the associated per-mile maintenance cost in each community, including a description of the type of physical facility maintained, and explanation of any change in its maintenance cost over the relevant period; and (3) a detailed summary of the total amount to be reconciled by community, including the timeframe for such reconciliation.

³ The six communities are Essex, Holyoke, Manchester By The Sea, Merrimac, New Bedford, and Westfield.

6. Town of Danvers

In reviewing the FCC Form 1240 for the Town of Danvers, the Department had concerns with the “BRN I-Net Maintenance” and the “Prior I-Net Maintenance” line items on the FRC worksheets. *See* Comcast-25. The Department requested that Comcast define and describe “BFN I-Net Maintenance” and “Prior I-Net Maintenance” for the projected period, the prior projected period, and the current true-up period. *See* IR 1-5. Comcast responded that the “BFN I-Net Maintenance” is a placeholder, and that no costs were passed through for the line item. *Id.* Comcast also explained that the “Prior I-Net Maintenance” was the cost of I-Net maintenance embedded at the time of regulation and used to offset the costs of the 2001 Renewal License. *Id.*

In conducting this review, Comcast stated that when it calculated the current FRC it removed the prior I-Net line item and only showed the current actual I-Net maintenance. *Id.* Comcast also stated it should have done a true-up to reflect the difference between the “Prior I-Net Maintenance” shown in the prior projected period and the actual I-Net maintenance shown for the projected period. *Id.* Comcast proposes to include a true-up in the next FRC calculation to correct this error. *Id.* Comcast states that including the true-up in the next FRC calculation will result in a \$0.03 decrease to the future FRC. *Id.*

The Department has permitted true-up reconciliation to correct for calculation errors. *Comcast Rate Setting Petition*, C.T.V. 05-3, *Rate Order* at 7 (Sept. 26, 2006) (“[T]he Cable Division has allowed the true-up reconciliation process to correct for other calculation errors, such as clerical errors[.]”). As noted above, the Department permits refunds through a true-up mechanism if doing so will properly compensate subscribers and issuing cash refunds or bill credits to subscribers may cause an undue burden to the cable operator. *See Comcast Rate Setting Petition*, D.T.C. 10-8, *Order on Reconsideration* at 5 (Apr. 23, 2012). According, the

Department accepts this proposed correction and directs Comcast to make a true-up adjustment in the next FRC calculation for Danvers.

B. Review of FCC Form 1205

The Department finds that Comcast's FCC Form 1205, as amended, was prepared in compliance with federal laws and regulations. FCC Form 1205 calculates rates for installations and equipment such as converters and remote controls, based upon actual capital costs and expenses. *FCC Form 1205 Instructions for Determining Costs of Regulated Cable Equipment and Installation*, at 1. (June 1996) ("*FCC Form 1205 Instructions*"). A cable operator annually prepares its FCC Form 1205 using information from its previous fiscal year. In its FCC Form 1205 filing, Comcast proposed adjusting its operator selected rates for equipment and installations. *See* Ex. Comcast-130; IR 1-34, Attachment 1-34. *Id.* at 2-3. In this proceeding, Comcast's FCC Form 1205 is for the fiscal year ending December 31, 2010. *See* Ex. Comcast-130; IR 1-34, Attachment 1-34.

In accordance with the FCC's regulatory requirements, subscriber charges established by FCC Form 1205 may not exceed charges based on actual costs. 47 C.F.R. § 76.923(a)(2). The cable operator has the burden to demonstrate that its proposed rates for equipment and installations comply with Section 623 of the Communications Act and its implementing regulations. *See* 47 U.S.C. § 543; 47 C.F.R. § 76.937(a) (regulation assigning the burden of proof to the cable operator); *FCC Rate Order* at 5716, ¶ 128. The Department determines that Comcast's FCC Form 1205, as amended, has been prepared in compliance with federal laws and regulations, and that the proposed rates are reasonable.

1. Outside Drops

The Department has previously determined that it is inappropriate for Comcast to include the time element associated with the outside drop in the average installation time for an unwired installation, as Comcast already capitalizes the cost associated with the drop portion of the installation. *See, e.g., Comcast Rate Setting Petition*, D.T.C. 10-8, *Rate Order* at 7-8 (Jan. 27, 2012); *Comcast Rate Setting Petition*, D.T.C. 09-6, *Rate Order* at 10-11 (Oct. 29, 2010); *Comcast Rate Setting Petition*, D.T.C. 08-6, *Rate Order* at 6 (Oct. 30, 2009); *Comcast Rate Setting Petition*, C.T.V./D.T.C. 06-3, *Rate Order* at 3-5 (Oct. 19, 2007); *Comcast Rate Setting Petition*, C.T.V. 04-3/04-4, *Rate Order* at 34-36 (Aug. 30, 2005). Comcast submitted a FCC Form 1205 in this proceeding that includes capitalized subscriber drops in the average unwired installation rates. Ex. Comcast-130. A cable operator may capitalize subscriber drop labor costs *or* include these costs in its installation rates. *See* FCC Form 1205 at 7. Comcast's initial filing did both. *See* Ex. Comcast-130. The Department issued an information request addressing this improper calculation, and on August 31, 2012, Comcast submitted a revised filing that removed the subscriber drops from its calculations. *See* IR 1-34, Attachment 1-34.

The Company's revised FCC Form 1205 excluded the time element associated with subscriber drops in the same manner as costs were excluded on prior Comcast FCC Forms 1205 approved by the Department. *Id.* Accordingly, the average hours per unwired home installation decreased from 1.3013 hours to 1.0913 hours. *Compare* Ex. Comcast-130 with IR 1-34, Attachment 1-34. Because of this decrease in labor hours, the MPR for an unwired home installation decreased from \$43.93 to \$36.81. *Compare* Ex. Comcast-130 with IR 1-34, Attachment 1-34. Comcast's OSR for unwired installation, however, is \$32.00, which is lower than the revised MPR of \$36.81 for unwired home installation. *See* Ex. Comcast-130, 2012

Installation and Equipment Rates. Because the OSR is below the revised MPR, Comcast has not charged customers a rate above the maximum permitted. Accordingly, no refund to customers is required.

2. Commissions

The Department has also previously determined that commissions are a marketing expense that should not be included in the FCC Form 1205 Schedule B operating costs. *See, e.g., Comcast Rate Setting Petition*, D.T.C. 10-8, *Rate Order* at 7-8 (Jan. 27, 2012); *Comcast Rate Setting Petition*, D.T.C. 09-6, *Rate Order* at 10-11 (Oct. 29, 2010); *Comcast Rate Setting Petition*, D.T.C. 08-6, *Rate Order* at 6 (Oct. 30, 2009); *Comcast Rate Setting Petition*, C.T.V./D.T.C. 06-3, *Rate Order* at 3-5 (Oct. 19, 2007); *Comcast Rate Setting Petition*, C.T.V. 04-3/04-4, *Rate Order* at 36-37 (Aug. 30, 2005). Accordingly, the Department has a standing order that Comcast remove labor costs associated with new installations and commissions from its FCC Form 1205. *Id.*

Comcast initially submitted a FCC Form 1205 that included sales commissions expenses. *See Ex. Comcast-130*. On August 31, 2012, Comcast, in response to the Department's information request, submitted an amended FCC Form 1205 removing sales commissions from its calculations. *See IR 1-34, Attachment 1-34*. The revised FCC Form 1205 removes costs associated with sales commissions by reducing the percentage of overall operating costs included in the regulated portion from 15.70 to 15.69 percent. *Compare Ex. Comcast 1-30 with IR 1-34, Attachment 1-34*. This adjustment reduces the hourly service charge ("HSC") from \$33.76 to \$33.73. *Id.* The revised FCC Form 1205 also reflects a slight decrease in other MPRs for installations, which were reduced by a range from \$0.01 to \$0.03. *Compare Ex. Comcast-130*

with IR 1-34, Attachment 1-34. The Department finds that Comcast in its FCC Form 1205, as amended, has properly removed commission expenses from its regulated rate calculations.

3. Boston's Concerns with Comcast's FCC Form 1205

On November 29, 2012, Boston submitted a brief to address its concerns with Comcast's support of the rates for a basic-only converter; support for the rates for converter box 2; the HD Technology Fee and HD Additional Outlet Service Fee; and credits to customers utilizing their own equipment. *Brief Addressing City of Boston's Concerns with Comcast's FCC Form 1205* ("Boston Brief") at 1-2 (Nov. 29, 2012). Boston alleges that Comcast cannot meet its burden of proof that its charges are based on actual costs. *Id.* at 2. It also includes a list of questions for the Department to ask Comcast to further investigate these issues. *Boston Brief* at 3, 4, 7, 9.

Boston's concerns regarding the MPR for the basic only converter and the converter box 2 appear inconsistent with the information presented on Comcast's FCC Form 1205. *See* Ex. Comcast-130; IR 1-34, Attachment 1-34. The MPR for the proposed basic only converter is \$0.63 and not \$2.50 as alleged by Boston. In addition, Comcast has separate rates for basic-only converters, non-HD converters, and HD converters. *See* Ex. Comcast-130; IR 1-34, Attachment 1-34. Comcast's response states that Boston's arguments rely on Comcast's FCC Form 1205 for the fiscal year 2011, whereas the Department is currently examining Comcast's FCC Form 1205 for fiscal year 2010. *Response to City of Boston's Brief Addressing Concerns with Comcast's FCC Form 1205* ("Comcast Response") at 1-2 (Dec. 7, 2012).

Comcast is correct that Boston's concerns as to basic-only converter and converter box 2 category are pertinent to Comcast's FCC Form 1205 for fiscal year 2011, not 2010, and thus, the Department cannot address Boston's concerns at this time. Asking Comcast additional questions concerning the basic-only converter and converter box 2 category as proposed by Boston is

unnecessary for the Department to complete its review of Comcast's FCC Form 1205. *See Boston Brief* at 3-4. The Department will, of course, consider whether such additional questions are warranted when the time does come to review Comcast's FCC Form 1205 for the 2011 fiscal year.

Boston's concerns addressing Comcast's HD Technology Fee and HD Additional Outlet Service Fee, are outside the scope of the Department's examination of Comcast's FCC Form 1205. Boston asserts that the HD Technology Fee and HD Additional Outlet Service fee are equipment fees that may be used in connection with the reception of the BST, should be included on the FCC Form 1205, and subject to Department regulation. *Boston Brief* at 5-6. Boston's assertions, however, do not correspond with the information presented on the FCC Form 1205 before the Department.

Comcast's FCC Form 1205 contains an MPR for HD equipment such as the HD converter box. *See* Ex. Comcast 1-30; IR 1-34, Attachment 1-34. For basic-only subscribers who request an HD converter box, Comcast charges an OSR below the MPR and does not assess additional fees like the HD Technology Fee or the HD Additional Outlet Service Fee. *See* Comcast Response at 4. A fee assessed to subscribers only in connection with their receipt of unregulated services, may not be regulated by the rate regulating authority. *See Boston Brief* at 7 n.4 (citing *Comcast Cable of Indiana/Michigan/Texas, Inc. (Irvine, TX)*, 19 FCC Rcd. 16344 (2004)), *Comcast Response* at 5 (citing *Comcast of Dallas, LP*, 20 FCC Rcd. 5892 (2005)). Therefore, the HD Technology Fee and the HD Additional Outlet Service Fee are outside the scope of the Department's review. Accordingly, the Department finds that it cannot address Boston's concerns regarding the HD Technology Fee and the HD Additional Outlet Service Fee.

Lastly, Boston requests that the Department inquire into Comcast's CableCARD services and its process for crediting customers that use their own equipment. *Boston Brief* at 7. Specifically, Boston requests that the Department inquire into the monthly credit rate Comcast provides for subscribers' use of their own equipment, and whether that rate is equal to cost of leasing similar Comcast-owned equipment in accordance with federal regulation. *See* 47 C.F.R. § 76.1205(b)(5)(2)(B)(2);⁴ *Boston Brief* at 9. The Department declines to inquire further into the credit Comcast provides for a subscriber's use of their own equipment in connection with a subscriber's subscription to a service offering where the cost of an operator-supplied navigation-device is bundled with the cost of service into a single fee. *See* 47 C.F.R. § 76.1205(b)(5)(2)(B)(2). The cost of equipment may be a factor in determining the appropriate credit to offer subscribers. *Id.* But, the actual cost of regulated equipment must be unbundled from the MPR for the regulated BST. *See* FCC Form 1205 Instructions at 1. As such, the rate for the BST should not be bundled with the cost of a navigation-device. If Comcast is making a bundled offer to subscribers of the BST that cost should merely be a combination of the OSR for the basic service and the OSR for the necessary piece of equipment. This situation, however, should not affect the information or calculations shown on the FCC Form 1205. *See* FCC Form 1205 Instructions at 1. Accordingly, the Department declines to address further Boston's concerns at this time. The Department, however, will continue to monitor and review the monthly rate of the credit to subscribers who use their own equipment and take appropriate action as necessary.

⁴ "For any bundled offer combining service and an operator-supplied navigation device into a single fee... such provider shall make such offer available without discrimination to any customer that owns a navigation device, and to the extent the customer uses such navigation device in lieu of the operator-supplied equipment included in that bundled offer, shall further offer such customer a discount from such offer equal to an amount not less than the monthly rental fee reasonably allocable to the lease of the operator-supplied navigation device included with that offer..."

4. Conclusion

The Department finds that Comcast has properly removed the time element associated with subscriber drops in the same manner as on prior Comcast FCC Forms 1205 approved by the Department. *See* IR 1-34, Attachment 1-34. The Department also finds that Comcast has properly removed commission expenses from its regulated rate calculations. *See* IR 1-34, Attachment 1-34. Lastly, the Department finds that Boston has not raised any issues requiring Comcast to further amend its FCC Form 1205. Accordingly, the Department finds that Comcast's FCC Form 1205, as amended on August 31, 2012, was prepared in accordance with FCC regulations and that Comcast's proposed rates are reasonable. *See* Attachment 1.

IV. ORDER

Accordingly, after due notice, hearing, and consideration, it is

ORDERED: That Comcast's FCC Forms 1240 for its 128 regulated communities, as filed on February 1, 2012, and amended on August 31, 2012, and September 7, 2012, are approved; and it is

FURTHER ORDERED: That Comcast's FCC Form 1205, as amended on August 31, 2012, is approved; and it is

FURTHER ORDERED: That Comcast refund the overcharges to consumers through the true-up mechanism built into the FCC Forms 1240 for the communities of Agawam, Amherst, Hatfield, Holyoke, Northampton, Orleans, Palmer, Pelham, South Hadley, Springfield, Ware, West Springfield, Westfield, and Williamsburg in next year's rate filing;

FURTHER ORDERED: That Comcast perform a true-up adjustment in the next FRC calculation to remedy Comcast's error in not decreasing the I-Net mileage in the FRC worksheet for Amesbury;

FURTHER ORDERED: That Comcast perform a true-up adjustment in the next FRC calculation to remedy Comcast's error in not utilizing the less expensive network type resulting in a decrease that was not reflected in the FRC worksheet for Concord;

FURTHER ORDERED: That Comcast submit a refund plan to the Department within 30 days of the date of this Order to compensate subscribers for overcharges related to the excessive I-Net mileage maintenance uncovered for Amesbury, Concord, Essex, Holyoke, Manchester By The Sea, Merrimac, New Bedford, and Westfield;

FURTHER ORDERED: That Comcast perform a true-up adjustment in the next FRC calculation for Danvers;

FURTHER ORDERED: That the parties comply with all other directives herein.

By Order of the Department

/s/ *Geoffrey G. Why*_____
Geoffrey G. Why, Commissioner

RIGHT OF APPEAL

Appeals of any final decision, order or ruling of the Department of Telecommunications and Cable may be brought pursuant to applicable state and federal laws.